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THE  
**P O W E R**  
 OF THE  
**L O R D S**  
 AND  
**C O M M O N S**  
 IN  
**P A R L I A M E N T**  
 In point of  
**J U D I C A T U R E**

briefly discours'd.

(H: Scobell)

*At the Request of a Worthy Member of the House of Commons.*

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THE  
OF  
AND  
MONUMENTS

IN  
PARLIAMENT

to be of

JUDICIAL



1871

## *The Power of the Lords and Commons in Parliament, &c.*

SIR,

**T**O give you as short an account of your Desires as I can ; I must crave leave to lay you, as a Foundation, the *Frame or First Model* of this *State*.

When, after the *Period* of the *Saxon Time*, *Harald* had advanc'd himself into the Royal Seat; the *Great men*, (to whom but lately he was no more than *Equal* either in *Fortune* or *Power*) disdaining this Act of *Arrogancy* and *Ambition*, called in *William Duke of Normandy*, (the most *Active Prince* of any in these *Western Parts*, and renowned for the *Victories*, that he had successfully *Atchieved* against the *French King*, then the most *Potent Monarch* in *Europe*.)

This *Duke* led along with him to this work of *Glory* many of the *Younger Sons* of the best *Families* of *Normandy*, *Picardy* and *Flanders*; who, as *Voluntiers*, accompany'd the undertaking of this *Fortunate Man*.

The *Usurper* being *Slain*, and the *Crown*, by *War*, gained; to secure *Certain* to his *Posterity* what he had so *Suddenly* gotten, he shar'd out his *Pur-*

chafe retainining in Each County a Portion, to support the Sovereign Dignity, which was stiled *Dementia Regni*; (now the *Ancient Demefnes*) and assigning to others his *Adventurers* such *Proportions*, as engaged to ~~Discharge~~ the *Depandancy* of their *Personal Service* (such Lands only excepted, as, in *Free Alms*, were allotted to the Church) These were termed *Barones Regis*, or the *Kings Immediate Free-holders*; for the word *Baro* imported then no more.

As the *King* to These, so These to their *Followers*, Subdivided part of their *Shares* into *Knights-Fees*, and their *Tenants* were called, *Barones Comitis*, or the like; for we find, as in the *King's Writ*, so in *Theirs*, *Baronibus suis al François & Anglois*, to their *Barons*, as well *French* as *English*; the *Royal Gifts*, for the most part, extending to whole *Counties* or *Hundreds*; an *Earl* being Lord of the *One*, and a *Baron* of the *Inferiour* Donations to *Lords* of *Townships* or *Mannours*.

And as the *Land*; so was also the *Course* of *Judicature* divided, even from the *Meanest* to the *Highest* Portion; each *Several* had his *Court of Law*, preserving still the *Custom* of our *Ancestors* the *Saxons*, who *jura per Pagos reddebant*, distributed Justice throughout each *Village*: And these were termed *Court Barons*, or the *Freeholders Court*, (twelve usually in number) who with the *Thame*, or *Chief Lord*, were *Judges*.

The *Hundred-Court* was next, where the *Hundredis*, or *Aldermannus* (Lord of the *Hundred*) with the *chief Lord* of each *Township* within their Limits, judged. God's People observed This Form; in the *Publick Centurionis & Decan Judicabant Plebani om-*

*in tempore*, Hundreds and Decennaries administering Justice to the People at all times.

The County Court, or *Generale Placitum*, was the next; This was to supply the Defect, or remedy the Corruption of the *Inferiour*. For *Ubi Curie Dominorum probantur defecisse, pertinet ad Vice-Comitem Provinciarum*; where the Hundred Court was found Defective, matters were referr'd to the Lord of the County. The Judges here were *Comites & Barones Comitatus, qui Liberas, in hoc, Terras habeant*; Barls and Barons of the County, that were Free-holders in the same.

The last and Supreme Court, and proper to our Question, was *Generale Placitum apud London*, the General Council at London; *Universalis Synodus*, the Universal Synod, in Charters of the Conquerour, *Capitalis Curia*, the Capital Court; by Glauvil, *Magnum & Commune Concilium coram Rege, & Magnatibus suis*; the Great and Common Council before the King and his Nobles.

In the Rolls of Henry the Third, It is not Statute, but summon'd by Proclamation. *Edicetur Generale Placitum apud London* (says the Book of Abingdon) whither Dukes, Princes, Satrapes, Rectors, & *Causidici ex omni parte confluerunt ad istam Curiam*, saith Glauvil, the General Assembly was called at London; whither Dukes, Princes, Peers, Rectors, and Lawyers resorted from all Quarters: And Causes were referr'd *propter aliquam dubitationem quæ emergit in Comitatu cum Comitatus nescit dijudicare*; upon any Question or Difficulty which the County Court was not able to solve. Thus did Ethelweld, Bishop  
of

of *Winchester*, transfer his Suit against *Leofine* from the County *ad Generale Placitum*, or the *General Assembly*: In the time of King *Etheldred*, Queen *Edgine* against *Goda*, from the County appealed to King *Etheldred* at *London*, *Congregatis Principibus & Sapientibus Angliæ*, where the Princes and Wise Men of the Land were met together. A Suit between the Bishops of *Winchester* and *Durham*, in the time of *S. Edward*, *Coram Episcopis & Principibus Regni in præsentia Regis ventilata & finita*; was handled and determined by the Bishops and Princes of the Realm in the presence of the King. In the 10th year of the Conquerour, *Episcopi, Comites & Barones Regni potestate adversis Provinciis, ad Universalem Synodum, pro causis audiendis & tractandis, convocati*; the Bishops, Earls and Barons of the Realm, &c. being assembled at the Universal Council to hear and determine Controversies, (says the Book of *Westminster*.) And *This* continued all along in the succeeding Kings Reign, until toward the end of *Henry the Third*.

**AS** this Great Court or Council, (consisting of the King and Barons) rul'd the important Affairs of State, and controlled all Inferiour Courts; so were there certain Officers, whose transcendant Power seem'd to be set for the circumscribing the Execution of the Princes Will; as the *Steward, Constable, and Marshal*, fix'd upon Families in Fee, for many Ages. They (as *Tribunes of the People, or Ephori* among the *Lacedemonians*) growing by unmanly Courage terrible to *Manarchy*, fell at the feet and mercy



mercy of the King, when the daring Earl of *Leicester* was slain at *Evesham*.

This *Chance*; and the dear *Experience H.* the Third himself had made at the *Parliament* at *Oxford*, in the fortieth year of his Reign; together with the *Memory* of the many straits his *Father* was driven unto, especially at *Rumny-Mead* near *Stanes*; brought this King to begin what his *Successors* fortunately finish'd; in lessening the *Strength* and *Power* of his *Great Lords*. And this was effected by searching into the *Regality* they had usurped over their *peculiar Sovereigns*, whereby they were found to be (as the *Book of St. Albans* termeth them) *quot. Domini, tot Tyranni*, how many *Lords*, so many *Tyrants*; and by weakening that *Influence* and *Sway* which they carryed in the *Parliaments*, by commanding the *Service* of many *Knights*, *Citizens*, and *Burgeses*, to the *Great Council*.

Now began the frequent sending of *Writs* to the *Commons*; Their assent not only used in *Money*, *Charge*, and making *Laws*, (for, before, all *Ordinances* pass'd by the *King* and *Peers*) but their Consent also in *Judgments* of all *Qualities* whether *Civil* or *Criminal*. In proof whereof I will produce some few succeeding *Presidents* out of *Record*.

When *Adamor* (that proud *Prelate* of *Winchester*, the Kings *Half Brother*) had aggrieved the State by his formidable *Insolence*; he was banished by the joyn't sentence of the *King*, the *Lords*, and *Commons*. And this appeareth expressly, by the *Letter* sent to *Pope Alexander* the Fourth, who expostulated a *Revocation* of him from *Exile* because he was a *Church-man*, and

Lib. S. Al-  
ban. fol. 20.  
7. An. 44.  
H. 3.

so not Subject to any Censure: In *This* the answer is *Si Dominus Rex aut Majores Regni hoc vellent* (meaning his Revocation) *Communitas tamen, Ipsi Ingressam in Angliam jam Nullatenus sustineret*; though the King and Lords should consent to his Revocation, yet would the Commons never allow of it. The Peers subscribe this Answer with their Names, and *Petrus de Mountford vice Totius Communitatis*, as Speaker, or Protector of the Commons.

Charta Orig.

sub Sigil. An.

8. H. 4.

For by that *Stile* Sir John Tiptoft (Prolocutor) affirmeth under his Arms the Deed of Entail of the Crowns by King Hen. the fourth, in the eighth year of his Reign, for all the Commons.

The Banishment of the two Spencers in the fifteenth of Edw. 1. d. Prelates, Comites, & Barones, & les autres Peeres de la Terre, & Communes de Royaulme, the Prelates, Earles and Barons, and the rest of the Peers of the Realm, and Commons of the Land, do give Consent and Sentence to the Revocation and Reversement of the Former Sentence; the Lords and Commons accord; and so it is expres'd in the Roll.

Rot. Parl.

15 Ed. 3.

vel 2.

In the first of Edw. the 3d. when Elizabeth the Widdow of Sir John de Burgh, complained in Parliament, that *Hugh Spencer* the Younger, *Robert Boddock*, and *William Cliffe* his Instruments had by Duress forced her to make a Writing to the King, whereby she was despoiled of all her Inheritance; Sentence is given for her in these words: *Pur ceo que avis est al Evuesques, Counts, & Barons, & autres Grandes, & a tout Cominalte de la Terre, que le dit script est fait contre Ley & tout manere de Raison, si faist le dit Escrip per agard del Parliament dampue ello.*



*alloquens al livre a la dit Elizabeth*, Forasmuch as it appeareth unto the Bishops, Earls, and Barons, and all the Commonalty of the Land, that the said Writing was made against all Law and Reason; it is adjudged by Parliament, &c.

In An. 4. Ed. 3. it appeareth by a Letter to the *Prela. Parli-*  
*Pape*, that to the Sentence given against the Earl of *am. 1. Ed. 3.*  
*Kent* the Commons were Parties, as well as the *Rot. 11.*  
 Lords and Peers; for the King directed their Proceedings in these words, *Comitibus Magnatibus, Baronibus, & aliis de Communitate dicti Regni ad Parliamentum illud congregatis innoximus, ut super his discernere & judicare, quod Rationi & Justitie conveniret, habere prae Oculis solum Deum, qui eum concordia unanimi sententia tanquam Rationis ordinis lesae Majestatis morti adjudicaret ejus sententia, &c.*  
 We have commanded the Earls, Peers, Barons, and others of the Commonalty of the said Realm assembled in Parliament, to determine in this matter according to Reason and Justice, having only God before their Eyes; and by an unanimous consent they have sentenced him to death, as guilty of *High Treason*.

When in the 50th year of Ed. 3. the Lords had *Parl. An. 5.*  
 pronounc'd the Sentence against *Richard Lion-Edw. 3.*  
 therwise than the Commons agreed, they appealed to the King; and had Redress, and the Sentence entered to their Desires.

When, in the first Year of Richard the Second,

B

Will.

*Will. Weston, and John Jennings, were Arraigned in*  
*Parl. An. 1. Parliament for surrendring certain Ports of the*  
*Rich. 2. 11. Kings; the Commons were Parties to the Sentence*  
*3. 8. & 3. 5. against them given; as appeareth by a Memorandum*  
*annexed to That Record. In the first of Hen. the*  
*Fourth, although the Commons referre, by Protestation,*  
*the pronouncing of the Sentence of Deposition*  
*against King Richard the Second unto the Lords;*  
*yet are they equally Interrested in it; as appeareth*  
*by the Record: For there are made Proctors, or*  
*Commissioners for the whole Parliament, one Bishop, one*  
*Abbot, one Earl, one Baron, and two Knights (Gray*  
*and Erpingham) for the Commons. And to infer that*  
*because the Lords pronounc'd the Sentence, the*  
*point of Judgment should be only Theirs, were as*  
*absurd, as to conclude that no Authority was vested*  
*in any other Commissioner of Oyer and Terminer, than*  
*in the Person of that Man only that speaketh the*  
*Sentence.*

*In the 2d of Hen. 5. The Petition of the Commons*  
*importeth no less than a Right they had to Assent*  
*and Assent to all things in Parliament; and so it is an-*  
*swer'd by the King. And had not the adjourn'd Roll*  
*of the Higher House been left to the sole Entry of the*  
*Clerk of the Upper House, (who, either out of neglect*  
*to observe due Form, or on set purpose to obscure the*  
*Commons Right, and to flatter the Power of those*  
*who he immediately served, omitted them,) there*  
*would have been frequent Examples of all Times to*  
*clear This doubt, and to preserve a just Interest to*  
*the Common Wealth. And how conveniently it suits*  
*with*

( II )

with *Monarchy* to maintain This *Form*, lest others of that well-fram'd *Body* knit under one *Head*, should swell too Great and Monstrous, may be seen with half an Eye; *it* being (in my Opinion) at least equally Liable to suffer a-fresh under an *Aristocracy*, as a *Democracy*.

S I R,

*I am*

*Your most humble Servant.*

H. S.

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F I N I S.

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